

# Alcorn's Chicken Cholera Cure

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## FLAW IN THE INDICTMENT.

Continued from First Page.

### Tuesday Afternoon Session.

Nearly all the afternoon was consumed by the attorneys preparing their pleadings growing out of the two indictments in the case. The defendant entered two pleas; first, not guilty; second, once in jeopardy; the law being that a man cannot be tried twice for the same offense; and the contention of the defense is that identically the same offense is charged in both indictments, and the same man referred to; that the deceased was known as J. D. Godfrey, and J. G. Godfrey, and Prof. Godfrey; and that having been put on trial once for the killing of this man he cannot be tried again for the same offense.

The State joined issue upon these pleadings. They denied that J. D. and J. G. Godfrey were the same, or that the defendant had ever been on trial for the killing of J. G. Godfrey. And upon these pleadings the jury was sworn. The witnesses for both sides were also called and sworn and put under the rule, and court then adjourned until Wednesday morning at 9 o'clock.

### First Witness Called.

Court convened promptly at 9 o'clock and the first witness called by the State was Mr. Geo. W. Howell, prosecutor in the case, and father-in-law of the deceased. Mr. Hughes conducted the examination in chief.

The witness testified in substance as follows: Am 72 years old; live in 10th district; lived there nearly all my life; 7 miles northwest of Columbia; father-in-law of deceased; they were married in August, 1898; his name was James G. Godfrey; he lived on Williamsport pike, one and a half miles from Columbia, on his wife's farm, which is east of my house. Farm belonged to Mrs. Godfrey and the Fly children; her first husband's children. I saw Thomas that morning early in the "Concord" field, where his hands were plowing. From where he was he could plainly see my house. Shortly afterwards, Godfrey rode up to me in the field, and after a short conversation between us we went to my barn lot to unload a wagon of corn; Godfrey helping me unload. We went from there to the Fly farm to make a survey dividing the farm between the heirs—the children of Mr. Fly and Mrs. Godfrey. Thomas could have seen us as we were going. When we reached the front gate of the Fly farm we met the County Surveyor, Mr. W. B. Wood, and Gus Moore, and Sam and Lee Harlan, colored, and went on to do the surveying. In a comparatively short time Mr. Thomas came up; he rode to near where I was, and hitched his horse. I was the hindmost man in the surveying party; Godfrey was in front; he and Mr. Wood were near together. Godfrey was not looking in my direction, and did not see Thomas at that time. Thomas hitched his horse, took off his coat and walked rapidly in the direction of Godfrey. As he passed me I spoke, and he said, "Good morning, Uncle George." He had an open knife in his left hand. I saw it distinctly. He went straight towards Godfrey, and spoke to him. I couldn't hear what he said. Mr. Wood and Sam and Lee Harlan were closer to him than I was. They were not far from the oak tree, Godfrey looking north east, and not in the direction of Thomas when Thomas accosted him.

"Where was Mr. Wood?" Thomas had to pass Wood to reach Godfrey. I heard voices but couldn't understand what was being said, except this: Thomas said to Godfrey, "Didn't I order you not to come on my place any more?" Godfrey's back was towards him when Thomas first spoke. Godfrey turned and raised his right hand and looked excited or scared, and said, "Gee, away, I don't want to have any trouble." Looking as he spoke, Thomas said, "If that's your game we'll play it." Godfrey had a small stick in his left hand; nothing in his right hand. I don't know what became of Thomas' knife. When he (Thomas) turned near the oak tree, I saw a pistol in his right hand, and he still had it in his hand when he spoke to Godfrey.

After the words I have above repeated, Thomas fired three shots in quick succession. At the first shot Godfrey started to run, having his back or side towards Thomas; at the first fire Godfrey bent forward; his back was towards me, but from the position of his elbows he appeared to have his hands on his stomach. There was considerable intermission between the third and fourth shots. Between the third and fourth shots Thomas followed Godfrey and was about eight feet away when he shot. Godfrey had travelled, or rather staggered, in a circuitous way about forty steps, Thomas following him. At the fourth shot he (Godfrey) was standing still, with his side still towards Thomas, and when this shot was fired he fell on his right side and face. Thomas had kept behind Godfrey, all the time.

This occurred in Maury county October 17, 1900. Godfrey's cane was found near where the first shot was fired. He had a sore foot, and this was a small walking stick. Godfrey made no demonstration to fight, that I saw. He seemed scared and wanted to get away. I heard Lee Harlan say to Thomas, "Don't do that."

At this juncture the clothes the deceased wore at the time, and also his watch, were put on exhibition and identified, showing bullet holes in the back of the vest and also of the coat and one over the right hip pocket of his pants. Witness testified that Thomas had the farm rented from Mrs. Godfrey. He said he knew the deceased as James G. Godfrey, or Professor Godfrey. He never knew him to be called James D. Godfrey.

### Cross-Examined by Mr. Voorhies.

The purpose of the cross-examination was evidently to lay grounds for contradiction or impeachment. In answer to the questions, witness said that soon after he saw Thomas in the Concord field, Godfrey came to him in his (witness') field. He knew there had been unpleasant feelings between Godfrey and Thomas. At Godfrey's request, in September or October, 1899, he had gone to Thomas and told him that Godfrey wanted him to come to his (Thomas') front gate and have a talk with him and make friends. Thomas accepted the invitation very readily and went, but instead of making friends, the conversation led to a fuss, but he did not hear at the beginning of the conversation Godfrey tell Thomas that after a night of restlessness, he had concluded to come and tell him what he thought of him, and that he was a dirty, low down scoundrel. Godfrey told him that he had been informed that he (Thomas) was circulating the report that he (Godfrey) was a gambler and whiskey drinker. Thomas denied it; said that the man who said it was a liar, and Godfrey said that the man who said it was a liar, and from that they got into hot words about it. Mrs. Thomas came down to where they were, but I did not hear her order Godfrey away, nor see her get in between them to prevent a difficulty.

When Godfrey asked me to take the message to Thomas, he told me that Mr. Lip Board would also be there, but he did not tell me that he would be there to act as a witness in case any difficulty occurred. Mr. Board was there when the conversation took place. I can't say that instead of making friends Godfrey provoked the difficulty. Thomas gave occasion to him to get his mittie up. Thomas never told me he didn't want any difficulty with Godfrey; never asked me to keep him away from there. All that is new to me. I never told Thomas or Carter Stone to keep Godfrey off the place, that he had squandered some of my grandchildren's money and would squander the balance if he got hold of it. No such conversation ever took place. I did not state to Thomas or any one else that I would not have gone after him, and invited him there to make friends, and then had this trouble to occur for \$250.

After Godfrey and Beard had left that day, I did not stay and talk with Thomas and his wife at all. Didn't meet Stone afterwards and tell him about the difficulty at the gate, and say that I would give \$250 to settle it. Godfrey's manner that morning at the gate was not over-bearing. He had nothing in his hand and was not armed that I know of. His general character was not that of an overbearing, tyrannical man. I didn't go back afterwards and tell Thomas that Godfrey had made bloody threats against him, and that I would give \$250 to settle the dispute between them; never told Thomas or Stone that Godfrey had threatened to kill Thomas. I never asked either of them to attach the wheat, or told them that Godfrey had already squandered \$3,000 of the children's money, and that he (Godfrey) would kill Thomas if necessary to get the balance. I never heard Godfrey make any threats against Thomas or any other man.

Thomas hitched his horse about 50 or 60 yards from the oak tree. He was behind me then. When he passed me his left side was towards me, and I saw the knife in his left hand. I could not see his right hand then, but when he turned north at the oak tree his hand was extended in front of him, when I saw the pistol in it. I don't think Godfrey saw Thomas until Thomas spoke, then he threw up his right hand and looked scared and said he did not want a difficulty and started as if to run, and Thomas said: "If that's your game we'll play it." Godfrey did not have a stick in his right hand, and did not strike at Thomas with it; he did not put his hand in his back pocket. I didn't see him draw his pistol if he had any, I didn't know it.

I know Carter Stone; saw him there after the shooting. I didn't say to him, Godfrey ran his hand into his pistol pocket, and that Thomas was too fast for him. I didn't say it to Frank Moore, either. I made no such remark. I didn't have any such conversation with Jonas Erwin in Columbia. I met Dr. C. A. Forney after the difficulty and he asked me about it. I didn't tell him that Godfrey pulled his pistol, and that it was found there.

We rented the place to Thomas in January, 1899, for three years, for \$500 per year, payable semi annually. He paid the first two notes promptly. The cross examination was finished at noon, and at the afternoon session the witness was turned over to the State for re-examination.

### Wednesday Afternoon Session.

Mr. Geo. W. Howell, who had been on the witness stand all the forenoon, was still on the stand when court convened in the afternoon. He had been examined in chief by the State, and cross examined by the defense, and was now again in the hands of the State to be re-examined by him. He was asked further questions as to what was said at Thomas' gate at the famous peace conference which came so near resulting in a battle. He said that when they got to quarrelling—Thomas and Godfrey, he told them both that he had come there for peace, not for trouble. That Thomas became so belligerent and angry that he proposed to Godfrey that they fight it out right there, and then, but that Godfrey neither accepted nor declined the challenge. That when Mrs. Thomas came upon the scene, Prof. Godfrey said he respected too much the presence of a lady to fight or quarrel in her presence, and that both he and Godfrey got on their horses and left the scene.

Question: On the day of the difficulty, when you left the scene of the tragedy, where was Godfrey and what was his condition?

Answer: He was lying on the ground, still alive, but in a dying condition. I left to make arrangements for the removal of his body, and to notify my daughter, his wife, of his condition.

Question: Was the pistol found there, found before or after you had left?

Answer: After.

Question: Did you meet Dr. C. A. Forney the day of the killing, and have any conversation with him; and if so, what was said?

Answer: Yes, I met him, and he stopped me and asked about the killing and I told him briefly and in part what I have told here, but nothing contradictory. I hurried on to my daughter's residence, knowing or believing that her husband's body was on its way there then.

And with this the witness was allowed to stand aside, and

### County Surveyor W. B. Wood.

the next most important witness in the

record was called to the stand.

Mr. Wood testified that he was the County Surveyor, and that on the day of the killing he had gone to the Fly farm, working under a decree of the Chancery Court, to divide the land according to the terms of the will. He got there about 8 a. m. Was overtaken by Mr. Geo. W. Howell and Mr. Godfrey.

Question: Had Mr. Godfrey employed you to do the work, or had any conversation with you on the subject?

Answer: He had not. I telephoned him the night before to know if he could meet me there, and he said he would.

Question: Who was with you when you started your work that morning?

Answer: Mr. Howell, Mr. Godfrey, Gus Moore, Lee and Sam Harlan.

Question: How long had you been there, or how much work had you done, when Thomas came?

Answer: We had measured 207 yards. Question: What were you doing, and what the relative position of all present, when Thomas came up?

Answer: We were standing still at the time, waiting for a count of the pins. Moore was in front with the flag; Lee Harlan next with the chain; I was next to him, Sam Harlan next to me, and Mr. Howell following. Mr. Godfrey was not doing any of the work, and was standing 15 or 20 feet to one side, just looking on.

Question: When did you first see the defendant, Thomas?

Answer: Not until he was right at me, or passing me, his right side to me; he had passed Mr. Howell and Sam Harlan before reaching me.

Question: What did you say to him, if anything, and what reply did he make, if any, and what took place?

Answer: I said something to his hand, which I took to be a knife. From that circumstance, and the expression on his face, I feared some trouble. So I said to him, as he passed, "hold up, John, don't do anything like that," and reached out and tried to stop him; but he passed quickly by and made no answer to me, but said to Godfrey, "I told you to stay off of this place."

Question: What did Godfrey say?

Answer: I did not hear his reply if he made one, but saw him start to retreat, to move backward.

Question: Then what took place?

Answer: Thomas paused just a moment, then fired. At the first shot Godfrey turned and started to run, circling back as he retreated. He went circling like, not straight, and Thomas followed him, firing three times in quick succession. By that time Godfrey had traveled nearly to the fence, and stopped, with his hands clasped across his stomach and bending over as in pain, and looking like he would fall. He was looking back over his shoulder at Thomas.

Thomas approached within six or eight feet of Godfrey and fired the fourth shot, and Godfrey staggered a step or two and fell, saying as he fell, "I'm killed."

Question: Did Godfrey draw any weapon or make any demonstration to defend himself?

Answer: He had a small walking cane in his hand, but made no effort to use it. Dropped it, I think, when the first shot was fired. I was watching him most of the time after the shooting began; he drew no weapon nor made any demonstration whatever that I saw. He was retreating all the time, looking back over his shoulder at Thomas, with his hands clasped across his stomach.

Question: Did you see a pistol picked up there?

Answer: Yes, I saw Lee Harlan pick up a pistol. He picked it up seven or eight feet from where Godfrey was standing at the last shot, and some four or five feet from where he had passed.

Question: How far from where Thomas was?

Answer: Perhaps ten or twelve feet.

Cross-Examined by Mr. Figuers:

Who employed you to do this surveying?

Answer: One of the attorneys.

Question: Had you not been told, and did you not tell Mr. Godfrey, that there would likely be trouble if he went on that farm?

Answer: No; I did not know of any serious trouble between them. I had heard that they were not on the best of terms, but did not know of anything serious.

Question: Didn't you warn Godfrey?

Answer: I did not.

Question: Didn't you tell him Thomas would get him?

Answer: I did not.

Question: Didn't tell him anything of the kind?

Answer: I did not. Because I was not expecting anything of the kind. When we reached the potato patch Godfrey said, "maybe we had better go 'round that," and I said, "maybe you had; Thomas might object to you being in his potato patch." I suppose that is what you are trying to get at.

Question: You say Thomas had a knife in his hand?

Answer: I said I thought it was a knife.

Question: Didn't you say at the time that it was a splinter, and he threw it away?

Answer: I did not.

Question: What did he have in his left hand?

Answer: His right side was towards me, I did not see his left hand.

Question: You say you were looking at Godfrey when Thomas approached him, and that he was facing Thomas?

Answer: Yes.

Question: How far apart were they, and what was Godfrey doing as Thomas approached?

Answer: Fifteen or twenty feet apart; Godfrey leaning or resting on his stick.

Question: After the shooting began you kept your eye on Godfrey, although he was making no demonstration, and the other man was doing the shooting?

Answer: Yes. When you see a man shooting at a mark, you watch the mark, not the man; at least I do.

Question: That pistol found by Lee Harlan, what became of it?

Answer: I took charge of it; put it in Luther Thomas' safe.

Question: You and the defendant are not on very friendly terms, are you?

Answer: I suppose we are.

Question: Did you not go for four years without speaking to each other?

Answer: No. There was a coolness

once between us, but we never stopped speaking.

### Re-Examined by State.

Question: What was the condition of the pistol when found?

Answer: It was full loaded.

Question: Did you notice and examine to see if any of the cartridges had been fired or snapped?

Answer: I did; they had not.

Question: When did Thomas draw his pistol?

Answer: I don't know. I didn't see him draw. After he passed me a few steps, he halted just a moment and then fired.

### Lee Harlan, Colored.

Another eye witness to the killing, was next called. He is a cropper on the Russell Estes farm. Mr. Godfrey, he said, had employed him to take the surveyor's instruments to the Fly place that morning, and he was carrying the chain in front and sticking the pins. The pins had run out and they were all at a stand still, and he had turned and was facing the others, when he saw Mr. Thomas ride up, dismount, hitch his horse to the fence, hang his coat on the fence, and start in his direction. He, Thomas, came up behind the other members of the surveying party. Heard him speak to Mr. Howell, as he passed him. Came on to where Mr. Godfrey was, and when he (Thomas) got nearly there, he (the witness) heard Mr. Wood say, "stop, John, there's no need of this."

Question: What did Thomas say and do then?

Answer: He pressed on towards Mr. Godfrey, with a knife in his hand, and said, "Godfrey, didn't I tell you never to put your foot on this place again?"

Question: Which way was Godfrey facing at that time?

Answer: He was looking at Mr. Thomas.

Question: Well, what occurred then?

Answer: Mr. Godfrey threw up his left hand like this, and his right hand like this, and began to back and say, "go way, go way, I don't want any trouble with you."

Question: Well, go on, what occurred then?

Answer: Mr. Thomas he pressed on, and he said, "if that's your game we'll play it," and he put his right hand in his pants pocket and drew his pistol.

Question: What was Godfrey doing then?

Answer: He had his left hand up like I showed you, and his right hand down, and was backing away; but when Mr. Thomas drew his pistol, Mr. Godfrey sorter turn like he was gwine to run.

Question: Well, what occurred right then?

Answer: Right then Mr. Thomas commenced shooting, and at the last shot, Mr. Godfrey fell down and said, "now you have killed me."

Question: Well, what else was done or said there?

Answer: I went and turned Mr. Godfrey over on his back, and straightened him out. Mr. Thomas was standing close by, and I said to him, "Mr. Thomas, I told you not to shoot that man no more; now you have killed him."

Question: What reply did Thomas make to that?

Answer: He said, "What have you got to do with it; do you take it up?" And I said, "no, sir, but I hate to see an innocent man butchered up that way."

Question: Well, had you told Thomas not to shoot Godfrey, and if so, when?

Answer: When he first started towards him, I told him not to shoot him.

Question: What did Godfrey have in his hand?

Answer: Nothing.

Question: Could you see both hands?

Answer: Yes, sir.

Question: And he had nothing in either hand?

Answer: No, sir.

Question: What did he do?

Answer: Didn't do nothing but throw up his hand and turn to run.

Question: Do you know anything about a pistol being found there, and who found it, and what became of it?

Answer: Yes, sir, I found a loaded pistol there, and gave it to Mr. Billy Wood.

Cross-Examined: You say Godfrey had nothing in his hand; didn't he have a stick?

Answer: He did have a stick at first.

Question: Didn't he have it when he raised his hand?

Answer: No, sir.

Question: What had he done with it?

Answer: I don't know; he must 'er drap it.

Question: When did he drap it?

Answer: Yes, when did he drap it?

Answer: I think it must 'er bin the first time.

Question: What first time?

Answer: The first time he (Thomas) approached him, (Godfrey.)

Question: Oh, there were two times more, were there?

Answer: Yes, sir. He pressed on him twice.

Question: Did he? Why, you didn't tell the Attorney General that.

Answer: He didn't ax me.

Question: Well, tell me about it. What occurred the first time?

Answer: The first time Mr. Godfrey just run between Mr. Wood and my brother.

Question: Was that before Thomas drew his pistol?

Answer: Yes, sir.

Question: Before he spoke to Godfrey?

Answer: Yes, sir.

Question: He just got scared at the sight of Thomas, and ran between Mr. Wood and your brother?

Answer: Yes, sir.

Question: When was it he threw up his hand with nothing in it?

Answer: That was the second time.

Question: What second time?

Answer: The second time Mr. Thomas passed him, I told you.

Question: What was Godfrey doing with his stick at the first time you speak of?

Answer: Had his right hand on the top of it, and the stick sorter behind him, leaning on it.

Question: And at the sight of Thomas he broke and ran between Wood and your brother Sam?

Answer: Yes, sir.

Question: It was the second time that Thomas spoke to Godfrey?

Answer: Yes, sir.

Question: What else did Thomas do that time?

Answer: He set up his knife, run his hand into his breeches pocket, pulled his pistol and fired.

Question: Do you know Mr. Joe Billy Foster?

Answer: Yes, sir.

Question: Did you not tell Mr. Foster, a few days after the killing, that when Thomas first approached Godfrey, that Godfrey struck at Thomas with his cane, in his left hand, and went after his pistol with his right hand, but that Thomas got his pistol out quicker than any man you ever saw?

Answer: Me tell him that?

Question: Yes, did you not tell him that or words to that effect?

Answer: Do he say I told him that?

Question: Never mind what he says, did you or did you not tell him that?

Answer: If I ever told him that, I hope I never speak another word; I hope never will. If he say that—well!

Question: Do you know Tom Jackson, a negro preacher?

Answer: Yes, sir.

Question: Did you not make a statement to him in substance the same as to Mr. Foster?

Answer: No, sir; and if he say I did, he's a mighty pore preacher.

You may stand aside, said Mr. Voorhies. "All right," said the witness, "but if these men come here and say I told them that, I want you gentlemen to call me back again and let me tell 'em what I said."

Sam Harlan, Colored,

who was carrying the rear end of the surveyor's chain, was the next witness called. He was an eye witness to the tragedy, and corroborated the testimony given by the other eye witnesses, Messrs. Howell, Woods and Lee Harlan. He testified that he said to Mr. Thomas as he, Thomas, passed him (the witness) "Mr. Thomas please don't do that." He had heard of the feeling between, and saw a knife in Thomas' hand, was why he said that. He also heard his brother Lee ask Thomas to stop, and also saw and heard Mr. Wood try to stop him, but he paid no heed to any of them but ressed rily on and commenced firing and Godfrey commenced retreating.

After the third shot, this witness said, Godfrey stopped running, and was standing bent over with his hands holding his stomach, looking back over his shoulder at Thomas, and Thomas walked up nearly to him and shot him the fourth time, and he staggered and fell, saying, "now you have killed me." The witness said that he said twice to Mr. Thomas, just before the shooting began, "please don't do that," "please don't do that." Thomas made no reply, but pressed on.

Cross-Examined: You and Thomas don't speak, do you?

Answer: Yes, Sir